

FILED

Mar 04, 2014

**9TH JUDICIAL CIRCUIT
COUNTY OF KALAMAZOO
KALAMAZOO, MICHIGAN**

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - TRIAL DIVISION
FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN
v Case No.: 2011-1983FC
SAMUEL STEEL III
Defendant.
_____/

HEARING ON MOTIONS
BEFORE THE HONORABLE PAMELA L. LIGHTVOET, CIRCUIT JUDGE
Kalamazoo, Michigan - Wednesday, May 8, 2013

APPEARANCES:

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WITNESSES:

None

EXHIBITS:

None

Identified

Admitted

1 Kalamazoo, Michigan

2 Wednesday, May 8, 2013 at 2:48 p.m.

3 THE COURT: Court calls the case of People v Sam
4 Steel the III, file number C11-1983FC. Counsel, identify
5 yourselves for the record.

6 MR. CUSICK: Good afternoon, your Honor, Paul
7 Cusick on behalf of the People, Assistant Attorney General.

8 MR. CHAMPION: If it may please the Court, Robert
9 Champion, appearing on behalf of Mr. Steel.

10 THE COURT: Okay. Counsel, we have a number of
11 motions up for today. Give me one second.

12 Folks, you cannot laugh and be disruptive during
13 the court proceedings. This is the second time, so if I
14 hear anyone else making, I don't know, loud, verbal
15 comments, gestures, laughing; I am going to have to ask you
16 to leave. Okay.

17 They have got to be able to concentrate; I got to
18 be able to concentrate, so just so you are aware of that.

19 Let me also just indicate and make sure that your
20 cell phones and other electronic communications are turned
21 off, because I will take them if they go off. Just so you
22 are aware of that.

23 But please just -- it is really hard to hear in
24 this court and I can hear you talking and so forth, so you
25 do need to keep quiet and just please be careful about

1 that.

2 Thank you.

3 So, we have a motion to change venue. We have a
4 motion to adjourn the trial. We have a number of motions
5 in limine. So let me start with the motion to change venue
6 and that is yours, Mr. Champion, so whenever you are ready
7 sir.

8 MR. CHAMPION: Thank you, your Honor.

9 Given the pretrial publicity of this particular
10 case, both in this and with this federal case, my client
11 and myself feel that he would not have a fair opportunity
12 for a fair trial in this county due to that publicity.

13 There has been a series of news articles that
14 have been published about my client, about the facts of
15 this case; and given the community prejudice, we believe
16 that he would not be able to receive a free trial and we
17 are asking that this Court change venue.

18 THE COURT: Go ahead.

19 MR. CUSICK: Briefly, your Honor.

20 The People would object to that. It is the
21 Defendant's burden to demonstrate that there is a presence
22 of strong community feeling or a pattern of prejudice that
23 re -- that rendered probable the publicity will result in
24 actual bias to the Defendant. And actual bias means that
25 there has to be extensive, egregious, media reporting of

1 mirage of inflammatory publicity leading to a pattern of
2 deep and bitter prejudice and -- and highly inflammatory
3 pretrial publicity.

4 I don't believe that the Defendant has met his
5 burden, your Honor. There have been news articles but
6 there really hasn't been a showing, based just on news
7 articles, that there is going to be actual prejudice on the
8 part of the Defendant. We can, obviously, deal with those
9 issues during the voir dire process.

10 THE COURT: Okay.

11 I am going to deny the motion. I do not believe
12 that the Defendant has met his burden of establishing that.
13 I do see Mr. Champion, you have attached a number of
14 articles. There are some M Live articles here from the
15 Internet and there may have been some publicity. The
16 incident occurred a couple of years ago, actually. The
17 Information alleges that the events occurred on or around
18 April 24, 2011; so that was two years ago.

19 I honestly don't recall anything over the last
20 couple of years. I know that there was some -- there was a
21 period of time where Mr. Steel was not in custody or that
22 they were looking for Mr. Steel; I realize that. But we
23 have a number pub -- publicity -- high profile cases that
24 are going to trial. I know that there is one across the
25 hall that has had, I believe, an extensive amount of

1 publicity and when the jurors come in, we usually don't
2 have issues with finding jurors that have not heard about
3 the case. So, I don't see that, that will be an issue. I
4 am going to deny that request.

5 MR. CHAMPION: Thank you.

6 THE COURT: So, we will move on to the motion to
7 adjourn trial now.

8 Go head Mr. Champion.

9 MR. CHAMPION: Yes, your Honor.

10 As the Court is aware, I became involved with
11 this particular case late in the process. I know that the
12 case has been pending for quite some time. My client is
13 charged with first degree murder in this particular case.
14 On February 14 -- 15th, the first time that we had a status
15 conference before this Court. At that time we still had
16 not received any of the information necessary for the trial
17 date that was set for May 15th. And when I say nothing, we
18 received absolutely nothing. We were coming in blind at
19 that particular point in time.

20 The prosecution, the very next day, they did
21 email us a portion of the police report which was
22 approximately 500 pages. Actually the -- the
23 investigation, there is over 1,500 pages of information in
24 this particular case.

25 The prosecution has listed approximately 140

1 witnesses. Going through the police report and meeting
2 with my client several times, we have come up with 20
3 witnesses.

4 Most recently, we just received additional
5 documents from the prosecution's -- from the Prosecutor and
6 they have been very cooperative in this matter. It is not
7 a situation where they are trying to hide anything, it is
8 just us determining what has and has not been provided to
9 our office.

10 Most recently, we received two boxes of telephone
11 records and that was done after an email was requested on
12 April 25th.

13 Additionally we received approximately 22 CDs.
14 Twelve of those were interviews of various individuals and
15 they need to be gone through in detail. Others were of
16 photographs and other recorded conversations.

17 Initial when we received the file from the former
18 attorney, we received 11 CDs involving this -- this case,
19 four of those did not work and none of them conveyed the
20 information as far as the interviews, they --

21 THE COURT: The -- I'm sorry. Those were the CDs
22 that you received from the prior attorney?

23 MR. CHAMPION: Yes and --

24 THE COURT: Were those included -- the 22 CDs
25 that you just received, you said, recently --

1 MR. CHAMPION: That's correct.

2 THE COURT: Were the 11 CDs then included in
3 those 22 CDs?

4 MR. CHAMPION: A portion of those and we were
5 comparing what we have, because some of them did not work.

6 THE COURT: All right.

7 But the ones that we most recently received and I
8 believe that was within the last week, Detective Beauchamp
9 met Susan Prentice-Sao in the parking lot and exchanged all
10 of the CDs and I believe that was Monday or Tuesday. Is
11 that correct?

12 It was Tuesday.

13 THE COURT: Were those CDs that were available
14 before, you just didn't get them before last week? Is that
15 your understanding?

16 MR. CHAMPION: That is my understanding.

17 THE COURT: So they are not recent interviews?

18 MR. CHAMPION: They are not recent interviews. We
19 just did not receive those.

20 THE COURT: Okay.

21 MR. CHAMPION: What we have been doing is going
22 through the volumes of information to make sure that we
23 have all of the evidence to be able to prepare for trial.

24 We are not even able to review the 12 CDs
25 containing interviews because we haven't had an

1 opportunity.

2 The other issue that we are dealing with is --
3 last year prior to our involvement, the Court granted funds
4 for a private investigator. We have been meeting with that
5 private investigator. We have provided him with the
6 reports. We provided him with a list of 20 witnesses that
7 we intend to call at trial to be interviewed. He has not
8 started interviewing those 20 witnesses. There was not a
9 witness list filed with this court up until our
10 involvement, and I believe that we have just recently filed
11 that witness list and I was just given additional witnesses
12 by my client today.

13 So, we are extremely behind the eight ball in
14 this particular case because of the volumes of information,
15 the information that we did not initially receive, the
16 information that we are just currently receiving within the
17 last week.

18 Given that position and my client is in agreement
19 with this, he wishes an adjournment at -- to properly
20 prepare for this trial. This Court has granted 60 hours --
21 up to 60 hours of time for the private investigator. I
22 anticipate not only interviewing our witnesses, but going
23 through the 140 witnesses listed in the prosecution's
24 witness list and interviewing some of those individuals.

25 So, given the amount of information, how we are

1 getting this information and how we are putting the case
2 together, we need additional time.

3 I will note that I have spoken to Mr. Reisterer,
4 the prior attorney. He thought that we had his notes and
5 work product. We do not have that. So, he is going to
6 meet at his office and we are going to attempt to locate
7 where that information may or may not be.

8 So, I am -- it is not a situation where I am
9 trying to delay these proceedings any longer; I simply do
10 not have enough time to review the amount of new
11 information, all of the information to be prepared for
12 trial on the 15th.

13 THE COURT: Is it your understanding that -- it
14 is Mr. Clatterbuck that you are using, right?

15 MR. CHAMPION: That is correct.

16 THE COURT: Is it your understanding -- has he
17 started interviewing any of the witnesses yet?

18 MR. CHAMPION: He has not started interviewing the
19 witnesses yet. Again, there was not a witness list, per
20 se, there was a rough draft.

21 Additionally, he had -- went to Mr. Reisterer's
22 office and reviewed some of the reports -- I have provided
23 him with additional information so that he can have the
24 proper information to be able to conduct interviews and do
25 the necessary follow up.

1 THE COURT: Go ahead.

2 MR. CUSICK: Thank you, your Honor.

3 I can appreciate the extensiveness of the
4 discovery and the many pages that Defense Counsel has to go
5 through.

6 I have received this case, as the attorney
7 general from the Attorney General's Office, we received
8 this case six weeks ago. I came to meet with the previous
9 prosecutor, John Anderegg, on April 2nd. Picked up all the
10 discovery -- there were two discovery packets there; one
11 for me and one for Defense Counsel. Everything that I had,
12 it is my understanding, that Defense Counsel received.

13 There were Defense Counsel and his associate did
14 ask for discovery that we had that I assumed that they
15 would have too because I was told that everything we have
16 they had. I, nonetheless, we provided it immediately. I
17 will say that most of the -- almost everything that we did
18 is not even relevant and not something we were even going
19 to admit, but we gave that to them immediately. We have
20 witnesses coming in from out of state. We have FBI agents
21 coming from Georgia, the Atlanta area. And we have an
22 individual coming from Kansas City who is testifying
23 regarding the Sprint phone records. We have a couple of
24 other witnesses coming from Georgia and Illinois and two
25 federal prisoners that need to be writted out.

1 So I, obviously, have been very busy the past six
2 weeks; I the Defense Counsel has as well. But we are ready
3 to proceed to trial on May 15th. The -- I believe that
4 Defense Counsel came on to the case in February, though, I
5 don't know his interactions with the previous Defense
6 Counsel.

7 It is my understanding that he has had almost
8 five or six months to speak with the previous defense
9 counsel regarding this case and receive discovery. Here we
10 are a week before trial asking for an adjournment. So --

11 THE COURT: He was just appointed a few months
12 ago also.

13 MR. CHAMPION: That is correct.

14 MR. CUSICK: I can appreciate that. I probably
15 misspoke. What I meant to say is that his interaction with
16 the previous defense counsel on getting information -- he
17 indicated -- Defense Counsel indicated that he is in the
18 process of gathering information from Mr. Reisterer. He
19 has had a while to do that. He has had five months to do
20 that.

21 That being what it is, your Honor, we are ready
22 to proceed. We have witnesses coming and if the Court is
23 willing to grant a very short adjournment -- I would still
24 object to any adjournment, but I certainly think that there
25 has been ample time to prepare for this case and certainly

1 we are ready to proceed.

2 MR. CHAMPION: It is a unique situation for my
3 client and myself in this particular case is because I
4 can't communicate with the former defense attorney; he now
5 works for the Prosecutor's Office in this case.

6 We requested the information. My associate went
7 to his office; Mr. Reisterer was not there at that time.
8 He -- she received two boxes of information from him. We
9 returned to our office. We went through, in detail, all of
10 it and then requested additional information.

11 I appreciate where the prosecution is coming
12 from, but fortunately, they have had the opportunity and
13 they have the resource, up to this point, the former
14 prosecutor and the lead detective who is able to -- who
15 knows the case and who has been involved in the case and
16 able to guide and give insight to the prosecutor. I do not
17 have that opportunity.

18 In essence, in February when we received this,
19 our first conference was February 15th. I still didn't even
20 have a police report or any type of information. So, I am
21 beginning this very complicated -- complicated case from
22 scratch, for all practical purposes. And I, frankly, need
23 additional time to properly defend my client.

24 THE COURT: Let me just indicate, I guess it is
25 an unusual case in that we have had some change over in

1 attorneys. The defense attorney who was previously
2 assigned to this case is -- thank you -- is now working for
3 the Prosecuting Attorney here who was elected last -- we
4 have a new prosecuting attorney as of the election of last
5 year, who started then in January. And so, we needed to
6 take him, obviously, off of the -- when he obtained
7 employment with the Prosecuting Attorney earlier this year,
8 we needed to take him off of the defense -- as the defense
9 attorney in this particular case, so we needed to appoint
10 another defense attorney and then we needed to appoint the
11 AG as the prosecuting attorney because certainly he was
12 going then to work with the Prosecuting Attorney's Office
13 here locally. So, we have new -- two new attorneys on the
14 case.

15 We did have a conference -- I know that I had a
16 conference with Counsel because given the age of the case,
17 we wanted to move things along. And I did understand that
18 there was a lot of information on the case and so I met
19 with the attorneys to find out how quickly we could set the
20 case, yet give them enough time to get up to speed on all
21 of the documentation and so forth.

22 So, I'll just outline that for the record too.

23 Let me just also make one other comment too in
24 regard to the motion to change venue. I am also confident
25 that during voir dire, we can sort out those jurors who may

1 have heard something about the case and we do it all the
2 time and see if there is something that they are aware of
3 that came up in the news. And if so, we address that
4 during voir dire. So, I am comfortable that that won't be
5 a problem during jury selection. I'll just add that to my
6 prior comments.

7 MR. CHAMPION: May I make one comment, your Honor?

8 THE COURT: Yes, go ahead.

9 MR. CHAMPION: In addition, in speaking with the
10 Prosecutor and I am in agreement with this -- to indicate
11 how naive, I guess, we were preparing for this particular
12 trial. We were anticipating a three day trial. We are now
13 to the point where we are looking at anywhere from two to
14 four weeks. That is how ill informed we were coming into
15 the initial settlement conference. I think that it is the
16 length of time that we are now anticipating for this trial
17 is indicating -- is an indication of how much information
18 and how complex this particular case is.

19 THE COURT: I am going to adjourn this for one
20 week. So right now the trial will start on May 21st, which
21 is a week later than what it was supposed to -- scheduled
22 to start. Actually it was supposed to start next
23 Wednesday. Counsel, I do want you to report, though, next
24 Wednesday, so be here for a status conference at nine
25 o'clock, which is the scheduled trial date. We will sort

1 through any issues at that point. But my intention is then
2 to start the trial then on May 21st --

3 MR. CUSICK: Your Honor --

4 THE COURT: Any subpoenas can -- should be able
5 to be extended, no one is released from their subpoena. If
6 there are subpoenas out there, the subpoena should indicate
7 that they need to be here until they are released by the
8 Court. And so they -- all of those subpoenas should still
9 remain.

10 Yes.

11 MR. CUSICK: Your Honor, first you indicated May
12 21st, it is a Tuesday, I believe, so it would be May 22nd,
13 correct?

14 THE COURT: I'm sorry.

15 MR. CUSICK: May 21st is a Tuesday, I believe. May
16 15th is a Wednesday.

17 THE COURT: Oh, I'm sorry. Yes. May 21st is a
18 Tuesday.

19 MR. CUSICK: Okay.

20 So, it would be May 22nd.

21 THE COURT: No, it would be the 21st.

22 MR. CUSICK: Okay.

23 THE COURT: The reason I believe I gave you the
24 May 15 date is because I have a meeting in Lansing on the
25 14th, which is generally when we would start. So, I think

1 that I gave you the firm date of the 15th, knowing that I
2 wouldn't be here next Tuesday.

3 So, no, we will start with jury selection on the
4 21st, but I do want you here next Wednesday.

5 And -- Mr. Steel, are you being -- are you here?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay, so you are in Kalamazoo, so we
8 will have you available if we need you next Wednesday then.

9 So, I will grant a one week adjournment.

10 All right, so that takes care of that motion.

11 We have a motion for attorney fees.

12 Mr. Champion.

13 MR. CHAMPION: That's correct, your Honor. As the
14 Court is aware, we have been putting a tremendous amount of
15 time into this particular case. To this point, we have
16 received \$700.00 in fees. We are anticipating, as the
17 Court is hearing it now, this is going to be a multi-day
18 trial. We are asking for full attorney fees in this
19 particular case and I suspect in the end that we will be
20 asking for additional fees at that point in time.

21 THE COURT: Do you have any position on this?

22 MR. CUSICK: No, your Honor.

23 THE COURT: Let me just indicate, I have a
24 concern because your motion indicates that on or about
25 March 21st, 2013, this Court ordered that Attorney Reisterer

1 has earned all of his fees in this case and granted an
2 additional \$700.00 to Attorney Reisterer. That is not what
3 the Court ordered. The Court's order indicates. I
4 authorized an additional payment of \$700.00 in this case.
5 Attorney Reisterer, I believe, in his motion was requesting
6 a determination that he had earned all those fees; but I
7 did not make that determination.

8 Pursuant to our court's policy, Attorney
9 Reisterer and in generally the case, we pay attorneys
10 upfront for the -- for a case; so when a new attorney takes
11 over, that is between the attorneys to figure out who is
12 entitled to what.

13 I would hope that I would not have to get
14 involved in that issue. I am not planning on addressing it
15 here, but that is, in the Court's eyes at this point,
16 between Attorney Reisterer and Mr. Champion, your office,
17 to sort through those payments.

18 And again, I did authorize an additional amount
19 on the case, which was the \$700.00, but I did not indicate
20 who should get what at all. I didn't have enough
21 information to make that determination even if I had been
22 asked to. And I am looking for my specific order. So just
23 -- so everyone is clear -- my March 21st, 2013 order
24 indicates that, Defense Counsel indicates in his motion
25 that he wishes the Court to find that he has "earned all

1 fees" in this case and that it "grant additional fees" to
2 the substituting attorney for the work required to handle
3 motions prior to trial. So, that paragraph referenced what
4 the defense counsel was requesting.

5 The only thing that I ordered was that upon
6 representations of the work completed, the Court will allow
7 additional payment of the \$700.00. I did not indicate how
8 that payment should be made or the prior payment, at all.
9 And again, accord -- you have to go back and look at the
10 court's policies with regard to when you are a contract
11 attorney what happens if someone substitutes. That is up
12 to you and Mr. Reisterer to sort out.

13 I know that sometimes those issues get sticky,
14 but I guess that I would indicate that if I needed to then,
15 maybe I would look into possibly appointing a third party
16 to mediate that issue, if need be.

17 I understand your concerns about future requests,
18 which may or may not be appropriate. I'll leave that to
19 you. Those are my only comments.

20 And -- so if the Court needs to be involved in
21 that, I guess that we'll deal with that later; and if I
22 need further briefings on the appropriate way to do that, I
23 would probably then bring Reister -- Mr. Reisterer back in
24 and let you all file your briefs and go from there. But I
25 am hoping, Mr. Champion, that you can work with Mr.

1 Reisterer on that, but those are my comments on the record
2 with regards to that.

3 I did see that you had some additional -- I think
4 that you had indicated that you had spent a couple of
5 hundred dollars in copy costs. I will authorize you
6 reimbursement for the copy costs.

7 MR. CHAMPION: Thank you.

8 THE COURT: I think that there was some issues
9 here with regards to you receiving documentation and
10 certainly I don't want that to hold you back either. So, I
11 will authorize an additional \$200.00 to your law firm. So
12 we are clear on the record.

13 MR. CHAMPION: Thank you.

14 THE COURT: Over and above what else has been
15 authorized on the case, for reimbursement for those copy
16 expenses.

17 Private investigator, that has already been taken
18 care of, as far as I am aware of right now. I don't need
19 to address that any further, but I did want to make clear,
20 given -- and maybe there was a misunderstanding with
21 regards to what was outlined in your motion, but I did not
22 indicate, at all, how those monies were supposed to be
23 paid.

24 So, hopefully I won't hear from you again on that
25 issue, but if I need to, then we will go from there.

1 MR. CHAMPION: Thank you.

2 THE COURT: Mmm hmm.

3 Anything else then with regards to that motion?
4 Mr. Champion.

5 MR. CHAMPION: No, your Honor.

6 THE COURT: All right.

7 Then I have Mr. Champion, I have your motion to
8 preclude irrelevant evidence seized during police
9 investigation.

10 MR. CHAMPION: Yes. In speaking with the
11 Prosecutor in this matter, the Assistant Attorney General,
12 I believe that much of this is not going to be admitted. I
13 guess my only question would be what issues would be
14 addressed --

15 MR. CUSICK: Your Honor, I can go line by line.

16 THE COURT: Okay.

17 MR. CUSICK: Indicating what I am objecting to. I
18 just received this Monday, but -- Monday afternoon, but --

19 THE COURT: Okay, let me do it this way, because
20 I think that it might be easier if you then meet and
21 determine what is coming in and what is not. I can tell
22 you right now, I can't make a ruling based on this. I have
23 no idea what is in these records, so I wouldn't be able to
24 make a determination without seeing those items and/or,
25 more likely, during the trial before they are presented to

1 the jury then.

2 So, maybe to speed things up, maybe we can just -
3 - we'll -- I'll let you re-notice this if necessary, after
4 you have had an opportunity to speak and determine what
5 really -- you really plan to bring in. Then, Mr. Champion,
6 if there is issues that we need to address before the
7 trial, maybe we can talk about those next week too, to see
8 if -- if we need to bring this back on the record or not or
9 if you have resolved everything.

10 But I can't -- I can't tell you right now, just
11 looking at AT&T records whether they are relevant or not --

12 MR. CUSICK: I understand --

13 THE COURT: -- without hearing the case.

14 MR. CUSICK: I understand, your Honor. Just to be
15 clear, after I talked with Mr. Champion about things that
16 we will concede -- the People will concede, I assume that
17 there will still be a motion. So, if you'll notice it up,
18 we'll respond if needed. Is that correct?

19 THE COURT: Okay.

20 MR. CHAMPION: And that was part of our concern.
21 I note that it is rather entailed what we are asking to be
22 excluded, but since trial was quickly --

23 THE COURT: Approaching.

24 MR. CHAMPION: -- a motion was necessary. Some of
25 these records we had just received within the week, so that

1 is why we were filing this particular motion.

2 THE COURT: Okay. And again, I'll just indicate
3 that based on this, I can't -- I don't have a ruling
4 because I haven't seen the records. But let me also
5 suggest, Counsel, that you can notice out the notice, maybe
6 for next Friday, if necessary, that is before trial on the
7 21st. And I know that we will have an opportunity at the
8 status conference, though, in chambers on Wednesday,
9 obviously. Okay. So, I won't address that motion at this
10 time then.

11 I have a -- I believe that takes care of all of
12 your motions, is that correct Mr. Champion?

13 MR. CHAMPION: That is correct.

14 THE COURT: So we will move to the 404B issue.

15 MR. CUSICK: Your Honor, just -- as stated in my
16 motion, the motive in this case, the People's theory of the
17 case, is that the Defendant killed Milo Conklin, the
18 victim, because he believed that Milo Conklin stole --
19 broke into his house and stole drugs from him. And so it
20 is part and parcel of -- for our theory of the case to show
21 that the Defendant was selling drugs to Milo Conklin --
22 that he felt that Milo Conklin broke into his house and
23 that was the very motive of him going to kill Milo Conklin.
24 There is case law, your Honor, indicating that motive is
25 always relevant, highly relevant. And I would just ask --

1 we are not offering it to show that the Defendant has a
2 propensity to commit murder; we are not offering it to show
3 that he is a violent or not a law abiding -- law abiding
4 citizen. We are simply offering it to show that his -- his
5 motive and his scheme into why he killed Milo Conklin. And
6 there are specific acts in people who knew both Milo and
7 the Defendant, who can testify about the relationship and
8 testify about prior acts of the Defendant in selling drugs
9 in that community and why he wanted to kill the victim.

10 MR. CHAMPION: We are objecting to that
11 information, your Honor. Even in their motion it is --
12 they are basing the motive on rumors with the community and
13 then we are going to specific acts, bad acts, 404B
14 evidence, that being the selling of drugs in this case to
15 somehow prove that there was this rumor or -- or this
16 speculation that my client had a motive to do certain
17 things.

18 The only purpose to bring in and to specifically
19 hear the times that the Kalamazoo Enforcement Team
20 purchased drugs would be to show that my client is of a bad
21 background or a bad person. It doesn't go to his motive.
22 It doesn't go to whether he had any information about this
23 rumor that was going around throughout the community.

24 So, based upon what they are actually asking the
25 Court to do, I would object that it be allowed to introduce

1 the prior bad acts or alleged bad acts under the 404B.

2 MR. CUSICK: If I could just expand on that very
3 briefly, your Honor.

4 THE COURT: First of all, it -- they are not
5 based on, necessarily rumors. We -- the way we are going
6 to offer this evidence is through testimony of the
7 Defendant making statements as to, I am going to kill Milo
8 Conklin -- something to that extent. And also he'll
9 testify about the relationship between Milo Conklin and the
10 Defendant which is basically a relationship based around
11 drug sales. And it is pretty hard to prove a case and let
12 the trier of fact know the complete circumstances between
13 the Defendant and victim if we can't talk about how they
14 know each other. Or how the witnesses know the -- the
15 main witnesses in our case, how did they know the
16 Defendant. Many witnesses will say that they know the
17 Defendant because they bought drugs from him. And that is,
18 I think, relevant to the case and relevant, especially, in
19 regards to Milo Conklin, relevant to why the Defendant
20 killed Milo Conklin.

21 It will come out, your Honor, that on April 3rd of
22 2011, the Defendant's house was broken into and it will
23 further come out -- it is the People's position that
24 whether or not it was the victim who actually committed
25 that breaking and entering, the Defendant believed the

1 victim broke into his house to steal drugs from him;
2 therefore creating motive to kill him in the first place.

3 So once your Honor -- highly relevant and I will
4 be -- this is going to be extremely prejudicial, certainly,
5 there can be a jury instruction indicating that it can't be
6 used for propensity purposes, but just to let the trier of
7 fact understand the circumstances that surrounded the
8 shooting.

9 THE COURT: I will allow evidence or testimony
10 about the fact that the Defendant's house was burglarized
11 and that it -- it sounds like there is going to be
12 testimony coming in that the Defendant believed that that
13 was -- Milo Conklin was the one involved in that or one of
14 the individuals involved in that. Is that accurate
15 Counsel?

16 MR. CUSICK: Yes, your Honor.

17 THE COURT: Okay.

18 And your motion addresses that there is some --
19 the testimony might be that Milo Conklin was breaking into
20 homes to steal drugs and -- is that tied into that, is that
21 what you are indicating?

22 MR. CUSICK: Yes, your Honor. It is more of not
23 proving whether or not that is true -- if the Defendant
24 believed that Milo Conklin was stealing from him and broke
25 into his house to get drugs and it may come out that he had

1 broken into other houses as well.

2 THE COURT: Okay.

3 All I can say is, we need to be very careful. So
4 before we get into these -- the testimony and the witness's
5 testimony before the jury, you need to make sure that you
6 are going to address this with me outside of their
7 presence.

8 Your -- for instance, in paragraph seven of the
9 People's motion to admit the evidence. There is a whole
10 slew of KVET purchases. I am not going to let all of that
11 in there. I mean, I think that we can present this in a
12 general sense, but I think, you know -- I am not going to
13 get into every single, certain, specific time that you are
14 alleging that KVET bought from the Defendant. I think that
15 is -- that would be more prejudicial than probative.

16 I think that if you are going to generally -- put
17 the general idea out there to establish the motive or the
18 scheme, that is appropriate. But again, we need to limit
19 that. So, I don't know who it is that you are going to use
20 to try to present that, but certainly we need to discuss
21 that before that is presented to the jury so we can limit
22 that appropriately. I don't know who all your witnesses
23 are and what the plan is at this point, but I will allow
24 that in a limited way, I will indicate.

25 I don't know why we need to get into, depending

1 on the witness, the relationship with the Defendant is --
2 it sounds like you are going to present some evidence that
3 maybe they knew him from buying drugs. That may or may not
4 be appropriate. I don't know until we get -- the trial
5 gets moving and if we need to tie that in or not.
6 Hopefully not, but I can see that there might -- it might
7 be appropriate under certain circumstances. So, I won't
8 allow that, again, without you bringing that to the Court's
9 attention ahead of time. But I don't expect every witness
10 to get on the stand and testify, I buy drugs from the
11 Defendant or whatnot. We need to taper that too. So, that
12 may be appropriate. I am not going to give you a ruling on
13 that specifically without -- until the time comes for trial
14 when we see how the testimony comes in.

15 It may also be more prejudicial than probative
16 and that is why we need to address that at the time of
17 trial.

18 So, I think that sums it up. I will, again,
19 allow you to bring in evidence, if you can tie it in with
20 regards to the April 3rd or 4th incident at Mr. Steel's
21 residence and the victim's -- Milo Conklin's -- the alleged
22 victim's involvement in that or as far as Defendant's
23 believe of his involvement in that. I can see that would
24 be relevant under certain circumstances to go to motive, so
25 I am granting that request, but it has got to be done in --

1 I can't tell you without hearing the testimony and who the
2 witnesses are going to be, the appropriateness of that.
3 But again, I don't expect all of the incidents to come in
4 that are outlined in paragraph seven of your motion.

5 Any questions on that right now?

6 MR. CUSICK: I understand, your Honor.

7 MR. CHAMPION: No, your Honor.

8 THE COURT: We need to see how that comes in at
9 the time of the trial and we can make those rulings
10 accordingly. But -- okay, anything else on that motion
11 then?

12 MR. CUSICK: Not on that motion. There are a
13 couple of other things, your Honor, that I would like to
14 bring to the Court's attention.

15 I just spoke with Defense Counsel and I would
16 just like to get a stipulation on the record. One of the
17 counts the Defendant is charged with is felon in possession
18 of a firearm and we have a stipulation that he was -- did
19 have a felony conviction and as a result was not eligible
20 to carry a firearm on April 24th of 2011. I can prepare a
21 stipulation, obviously, I won't indicate on that
22 stipulation what the Defendant was convicted of, but I just
23 want to place the stipulation on the record.

24 THE COURT: So that is count three that we are
25 talking about?

1 MR. CHAMPION: That's correct.

2 THE COURT: And there is an agreement that he did
3 have a prior felony that would prevent him from being able
4 to possess a firearm. We are just not indicating what that
5 --

6 MR. CHAMPION: That's correct.

7 THE COURT: -- prior conviction is, we will just
8 indicate that he had the prior conviction on whatever date
9 that satisfied that requirement. That would be great. If
10 you could prepare the stipulation on that then, we can
11 determine later if we need -- how to address the jury
12 instructions then on that.

13 MR. CUSICK: Thank you, your Honor.

14 Just two more things and -- and one of them I
15 indicated to Defense Counsel regarding our witness list.
16 Charles Thomas is a witness. We do not intend to call him,
17 so we would move to strike him from our witness list and we
18 will file a new witness list. And I would ask to add Linda
19 Davis, she was on our initial list that we filed, what, a
20 month ago. And I would ask that she be added once again.

21 THE COURT: So you are planning on filing an
22 amended list -- witness list taking out -- taking off
23 Charles Thomas and adding Linda Davis.

24 MR. CUSICK: Yes.

25 THE COURT: You understand that, Mr. Champion?

1 MR. CHAMPION: Yes. My client just informed me
2 that he would like Mr. Thomas as a witness, so we will be
3 amending ours and (inaudible, lowered voice) to locate Mr.
4 Thomas.

5 THE COURT: Okay.

6 So, everyone seems to be okay with how that is
7 being handled and that is fine then.

8 MR. CUSICK: And one more thing, your Honor, and I
9 spoke with Defense Counsel about this. There are two
10 witnesses one is Mark Sprague and the other is Paige
11 Bowers. And I don't want to go into too detail -- too much
12 detail here, your Honor, but they will testify that they
13 broke into a home on January 15, 2011 and that -- from that
14 break in, they received a 40 caliber -- 40 caliber H&K
15 handgun. They turned it over or sold it to a Walter
16 Johnson, a witness in the case, who will testify that he
17 gave that to the Defendant. So, obviously that will be
18 relevant testimony -- I would like to present the Court
19 with an order of immunity regarding Mark Sprague and Paige
20 Bowers, that what they say in this courtroom regarding that
21 incident can't be used against them.

22 I have prepared it, your Honor. I have also
23 prepared a petition, if the Court would like to look over
24 it and then make your ruling, that is --

25 THE COURT: I'll look over those after the

1 hearing today.

2 MR. CUSICK: Okay.

3 THE COURT: That's fine.

4 MR. CUSICK: Can I -- can I approach, your Honor?

5 THE COURT: Yes.

6 You are going to give me those so that I can keep
7 track of those and not you.

8 MR. CUSICK: And I apologize, can I sign those
9 real quick?

10 THE COURT: Yes. Do you need a pen? Here.

11 Anything else then, Counsel, that we need to
12 address? That covers all of the motions?

13 MR. CHAMPION: I believe that it does, your Honor.

14 THE COURT: Any other issues that we need to
15 place on the record at this time?

16 MR. CHAMPION: Not at this time.

17 MR. CUSICK: Charles Thomas will have to be
18 writted out of the State prison, so -- I will work with
19 Defense Counsel with writting him out.

20 THE COURT: Otherwise, I'll sign your writ too,
21 but if you can work that out, that's great.

22 MR. CHAMPION: Thank you.

23 THE COURT: Okay.

24 So, Counsel, next Wednesday, you are going to be
25 here just for a status. Mr. Steel is local, so if we need

1 to bring him over in the afternoon, we can do that then;
2 but otherwise, I just want to know where you are at with --
3 I don't think there were any other issues that were going
4 to pop in -- pop up based on what we talked about today and
5 if we need to address those on the record, then we can
6 bring Mr. Steel over in the afternoon and address that.
7 And sounds like we might have some motions or a motion next
8 Friday. We'll just move the settlement conference to next
9 Friday too, so the settlement conference -- the final
10 settlement conference will then be May 17 and the trial
11 will start on May 21st. Your subpoenas -- everyone is still
12 under subpoena. Any subpoena that have been sent out.
13 Anything else that we need to address, Counsel?

14 MR. CUSICK: Your Honor, whenever I say that there
15 is nothing else, it seems like something pops up. But
16 there is one witness, Kristine Wilkerson, she lives in
17 Georgia. She can testify that she was living with the
18 Defendant when he was on the run and hiding from
19 authorities. And I was wondering if it would be possible -
20 - she has been contacted, the subpoena has been sent -- for
21 telephone testimony regarding her?

22 THE COURT: Any objections --

23 MR. CUSICK: Teleconference.

24 THE COURT: Let me just indicate how our
25 teleconference system works, also. We have a monitor here

1 and I don't know, by the time of trial we might even get a
2 bigger monitor; they are working on getting that up. It is
3 a real time situation and so Mr. Steel, for your reference
4 too, just so that you know that too, they will appear on
5 the screen and they can see us, generally, if they have got
6 the right accommodations there. And so any documentation
7 can usually be done by way of email also so they have that
8 too. But they should be able to see us and we should be
9 able to see them, just so that you understand that if
10 everything is working properly and if it is not, then put
11 it on later. But that is the way that usually works. So
12 Mr. Champion, do you have any objections to her appearing
13 then?

14 MR. CHAMPION: My client indicates that he wishes
15 the witness to be here.

16 THE COURT: So, we have an issue with that that
17 we need to address and we might need briefings on that
18 then. My recollection is that the new rule came through,
19 but I have to double check to make sure and read that.
20 There was a rule they were working on that we were
21 addressing that. I don't know if it has been changed yet
22 or if it is a proposed rules change.

23 MR. CHAMPION: Your Honor, my client has
24 reconsidered and he has no objection to her appearing by --

25 THE COURT: So you have reconsidered, Mr. Steel -

1 -

2 THE DEFENDANT: Yes.

3 THE COURT: You don't want her here live and that
4 is okay. Is that what you are saying?

5 THE DEFENDANT: Yes. Yes.

6 THE COURT: All right, I appreciate that, that
7 takes care of that issue then.

8 Anything else?

9 I'm sorry, what was her name again?

10 MR. CUSICK: Kristine Wilkerson.

11 THE COURT: Kristine Wilkerson. Okay.

12 Anything else?

13 MR. CUSICK: No, your Honor.

14 MR. CHAMPION: Not at this time.

15 THE COURT: Fabulous. We will see everyone next
16 week.

17 MR. CUSICK: Thank you.

18 MR. CHAMPION: Thank you.

19 THE COURT: Yes, we will cancel the settlement
20 conference for Friday then and it will be a week from
21 Friday and trial will be the 21st.

22 MR. CUSICK: Your Honor, we will be here in court
23 May 15th, correct?

24 THE COURT: You will be here on Wednesday when
25 you are supposed to be here for trial; just for a status

1 with the attorneys. And if need be --

2 MR. CHAMPION: We are not here on the 10th

3 THE COURT: No, that is Friday, that is off.

4 MR. CUSICK: Or the 17th?

5 THE COURT: Yeah, the 17th then is the settlement
6 -- the final settlement conference that was set for this
7 Friday. I'll just move it back a week, so it is -- we
8 always have our settlement conferences the Friday before
9 the trial.

10 MR. CUSICK: Your Honor, what time would that
11 settlement conference be?

12 THE COURT: That will be at 1:30.

13 MR. CUSICK: Is it possible for that --

14 THE COURT: Do you want to just hold the
15 settlement conference on Wednesday instead?

16 MR. CUSICK: If possible, yes, your Honor.

17 THE COURT: Mr. Champion? Since you are coming
18 here next Wednesday, I can hold the settlement conference
19 that date.

20 MR. CHAMPION: That's fine. Can we make sure that
21 my client is here for that date also?

22 THE COURT: Yeah and we indicated anyway that we
23 could bring him over in the afternoon if need be. So, I'll
24 meet with you in the morning, Counsel. We'll just hold the
25 settlement conference at 1:30 on the 10th -- on the 15th

1 then.

2 MR. CUSICK: Thank you for your cooperation.

3 MR. CHAMPION: Thank you.

4 THE COURT: Okay. Good.

5 Thank you, Counsel and you both have orders to
6 prepare then, correct, based on the Court's ruling?

7 MR. CUSICK: Yes, your Honor.

8 THE COURT: Mr. Champion has more orders.

9 All right.

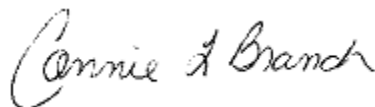
10 (At 3:38 p.m., court is in recess)

11
12
13 STATE OF MICHIGAN)

14)
15 COUNTY OF KALAMAZOO)

16 I certify that this transcript consisting of 37 pages is a
17 complete, true, and correct transcript of the hearing held in
18 this case on May 8, 2013.

19
20
21
22 February 22, 2014



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